

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

GEORGE D. METZ, II,)	
)	
Plaintiff,)	
)	
v.)	CIVIL CASE NO. 1:22-cv-303-ECM
)	
DONALD VALENZA,)	
)	
Defendant.)	

MEMORANDUM OPINION and ORDER

Plaintiff George D. Metz, II, acting *pro se*, filed this 42 U.S.C. § 1983 action against Defendant Donald Valenza, asserting violations of his rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution. (Doc. 1).¹ On December 7, 2023, the Magistrate Judge entered a Recommendation that the Defendant's motion to set aside the clerk's entry of default and file his answer out of time (doc. 34) be granted, and that the Plaintiff's motion for entry of default final judgment (doc. 35) be denied. (Doc. 36). The Plaintiff filed objections to the Recommendation. (Doc. 37). After carefully reviewing the record in this case, the Recommendation of the Magistrate Judge, and the Plaintiff's objections, the Court concludes that the Plaintiff's objections are due to be overruled, the Recommendation of the Magistrate Judge is due to be adopted, the Defendant's motion to set aside the clerk's entry of default and file his answer out of time is due to be granted, and the Plaintiff's motion for entry of default final judgment is due to be denied.

¹ The Plaintiff also sued Officer J. Dodson, but this defendant was dismissed on March 24, 2023, (doc. 25).

When a party objects to a Magistrate Judge's Report and Recommendation, the district court must review the disputed portions *de novo*. 28 U.S.C. § 636(b)(1); *see also United States v. Raddatz*, 447 U.S. 667, 674 (1980). The district court "may accept, reject, or modify the recommended disposition; receive further evidence; or resubmit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b)(1). *De novo* review requires that the district court independently consider factual issues based on the record. *Jeffrey S. by Ernest S. v. State Bd. of Educ. of State of Ga.*, 896 F.2d 507, 513 (11th Cir. 1990). However, objections to the Magistrate Judge's Report and Recommendation must be sufficiently specific in order to warrant *de novo* review. *See LoConte v. Dugger*, 847 F.2d 745, 750 (11th Cir. 1988) ("Whenever any party files a timely and specific objection to a finding of fact by a magistrate, the district court has an obligation to conduct a *de novo* review of the record with respect to that factual issue."). Otherwise, a Report and Recommendation is reviewed for clear error.

In the Recommendation, the Magistrate Judge found that the Defendant's default was not willful or culpable on the grounds that the Defendant's primary counsel was diagnosed with a serious medical condition rendering her unable to work. (Doc. 36 at 4). The Plaintiff objects to this finding, asserting that Attorney Richard Hill, the Defendant's other counsel of record, could have filed the answer himself. The Court agrees with the Plaintiff to the extent that the illness of one of the Defendant's counsel did not by itself preclude the Defendant's other counsel from timely answering the complaint. Notwithstanding this observation, the Plaintiff fails to show that the Magistrate Judge erred

in his analysis concerning prejudice or the Defendant's meritorious defense, or in the ultimate legal conclusion that the Defendant established good cause to set aside the entry of default. Consequently, the Plaintiff's objections are due to be overruled.

Accordingly, upon an independent review of the record, and for good cause, it is ORDERED as follows:

1. The Plaintiff's objections (doc. 37) are OVERRULED;
2. The Recommendation of the Magistrate Judge (doc. 36) is ADOPTED;
3. The Defendant's motion to set aside the clerk's entry of default and file his answer out of time (doc. 34) is GRANTED;
4. The Plaintiff's motion for entry of default final judgment (doc. 35) is DENIED;
5. This case is REFERRED back to the Magistrate Judge for further proceedings.

DONE this 14th day of February, 2024.

/s/ Emily C. Marks
EMILY C. MARKS
CHIEF UNITED STATES DISTRICT JUDGE